this undertaking is a serious matter. We would refer to a passage in '*A guide to the professional conduct of solicitors*' issued by the Council of the Law Society (U.K.) 1974, Chapter 4, Rule 2:19 which is of material interest:

"A breach of an undertaking to the court, to the Disciplinary Committee, to The Law Society or to accountants employed by the Society have all been held by the Disciplinary Committee to be unbefitting conduct."

On the facts as disclosed and found by the committee, we could not see how the finding that the appellant was guilty of professional conduct unbefitting an advocate and solicitor could be successfully challenged before this court. Members of the Bar are officers of the court and are expected to comport themselves honourably, as befit members of the honourable profession. The appellant's failure to honour the undertaking by itself demonstrates his unfitness to belong to a profession where, in practice, his colleagues must insist upon the maintenance of the highest standards.

A relationship of trust and confidence between the courts and the members of the Bar is essential for the due administration of justice in this country, and that relationship would be impaired if, on any but the most compelling grounds, the courts were to interfere with the finding of the committee in a matter so peculiarly its concern.

*Appeal dismissed.*

Solicitors: *Mah-Kok & Din.*

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## DATUK PASAMANICKAM & ANOR v. AGNES JOSEPH
## R. NARAYANAN SAMY v. AGNES JOSEPH

**[F.C. (Raja Azlan Shah C.J. (Malaya), Chang Min Tat F.J. & Salleh Abas F.J.J.) March 11 & 26, 1980]**

**[Kuala Lumpur — Federal Court Civil Appeals Nos. 245 & 248 of 1979]**

*Administrative Law — Declaration — Society — Article in Constitution of Society forbidding resort to court proceedings until matters are referred to Central Working Committee — Whether provision purports to oust jurisdiction of Court — Whether contrary to public policy.*

*Society — Article in Constitution of Society forbidding resort to court proceedings until matters are referred to Central Working Committee — Whether provision purports to oust jurisdiction of Court — Whether contrary to public policy.*

In this case the respondent had brought an action for a declaration that the annual general meeting of a branch of the Malaysian Indian Congress was unconstitutional and unlawful on the ground that the required notice to hold the meeting was not duly and properly given. Article 15(4) of the Constitution of the Malaysia Indian Congress forbids members from resorting to Court proceedings in matters relating to their rights, obligations, duties and privileges unless and until such matters are first referred to the Central Working Committee. The learned trial judge held that this provision in the Constitution did not preclude the respondent from applying to the court as the complaint or dispute in this case was not of a domestic nature and there had been non-compliance with the rules relating to the giving of notice of meeting. He held that the respondent was entitled to the declaration sought. The appellants appealed. The only ground taken on appeal was that article 15(4) of the Constitution of the Malaysian Indian Congress purports to oust the jurisdiction of the Courts and is consequently against public policy and void.

**Held:** (1) Article 15(4) of the Constitution of the Malaysian Indian Congress provides as a first step that reference to the Central Working Committee is a condition precedent before resorting to court proceedings. The effect of this is that a member is not excluded from going to court but must first refer the matter to the domestic forum. Such a clause is legitimate and not contrary to public policy;

(2) in this case the matter should have been referred to the Central Working Committee before action in court was brought and the appellants were entitled to set up the failure to do so as a defence.

*Cases referred to:-*

(1) *Tharmalingam* v. *Sambanthan* [1961] M.L.J. 63.

(2) *Arthur M'Cowan* v. *The City of Glasgow Friendly Society & Ors.* [1913] S.C. 991.

(3) *Scott* v. *Avery* 10 E.R. 1121.

(4) *Atlantic Shipping Co.* v. *Dreyfus* 38 T.L.R. 534.

(5) *Czarnikow* v. *Roth, Schmidt & Co.* [1922] 2 K.B. 478.

HIGH COURT.

*V.C. George* (*H. Parjit Singh* with him) for the plaintiff.

*D.P. Vijandran* (*M. Muthupalaniyappan* with him) for the 1st and 2nd defendants.

*M. Jayasingam* for 3rd defendants.

*John Gomez* for 4th defendants.

*Cur. Adv. Vult.*

**Ajaib Singh J.:** The plaintiff in this case seeks a declaration that the annual general meeting of the Parit Bakar branch of the Malaysian Indian Congress held on March 19, 1979 was unconstitutional and unlawful and therefore ineffective, null and void. She has named Datuk Pasamanickam and K. Tanalachimi, who were elected chairman and secretary respectively of the branch at that meeting, as the first two defendants. R. Narayanasamy who acted as the returning officer at the meeting is named as the 3rd defendant. The 4th defendant is Senator S. Subramaniam who is registered under section 9(c) of the Societies Act, 1966 as the public officer of the Malaysian Indian Congress thus bringing the national body itself as a party to this suit.

In her statement of claim the plaintiff has made a number of allegations against the Parit Bakar branch but at the commencement of the hearing of the suit it was agreed by the parties that the only issue to be determined was whether the annual general meeting of the Parit Bakar branch of the Malaysian Indian Congress held on March 19, 1979 was unconstitutional, unlawful, ineffective and null and void on the ground that the required notice to hold the meeting was not duly and properly given.

The plaintiff is one of the founder members of the Parit Bakar branch which was established in 1974 and her brother-in-law Mr. Kanniah was its chairman throughout until Datuk Pasamanickam was elected in his place at the annual general meeting of the branch held on March 19, 1979. The plaintiff who is now a kindergarten teacher had worked as a typist for Datuk Pasamanickam for about two years until mid-February 1979. In the course of time some members of the Parit Bakar branch became dissatisfied with the branch

and eventually the plaintiff together with one Kolanda Pyan who was the assistant secretary of the branch decided to contest the elections and wrest control of the branch. On February 23, 1979 Kolanda Pyan wrote to the secretary-general of the M.I.C. at Kuala Lumpur alleging certain irregularities against the branch committee. As a result the national President of the M.I.C. the late Tan Sri Manickavasagam held a meeting with the branch officials as well as some members of the central working committee of the M.I.C. on March 12, 1979. The defendants say that at that meeting Tan Sri Manickavasagam directed that the annual general meeting of the Parit Bakar branch be held on March 19, 1979. The plaintiff disputes this and according to the evidence of her witness Kolanda Pyan who had attended the meeting the national President merely directed that the meeting be held but no specific date was mentioned by the President.

The Malaysian Indian Congress is a registered society under the Societies Act. Under section 40 of this Act it is provided that disputes between a member of a registered society and the society or an office-bearer thereof shall be decided in the manner directed by the rules of the registered society. It is stated further in this section that any decision given in accordance with those rules shall be binding and conclusive on all parties without appeal and shall not be removable to any court or restrainable by injunction.

The rules which govern all members of the Malaysian Indian Congress are set out in the constitution of the Congress. Article 15(4) of this constitution forbids the members from resorting to court proceedings in matters relating to their rights, obligations, duties and privileges as members of the M.I.C. It reads as follows: —

"Every member shall be bound by the decision of the Central Working Committee in matters relating to his rights, obligations, duties and privileges as a member of the Congress. If he resorts to court proceedings in respect of his rights, obligations, duties and privileges or on behalf of any other member or in respect of the rendering or meaning of the provisions of this Constitution without first referring to the Central Working Committee or in violation of any decision or directive of the Central Working Committee, he shall *ipso facto* cease to be a member of the Congress and shall not be entitled to exercise any of the rights of a member."

Article 7(4)(c) of the M.I.C. constitution states that notice of the annual general meeting of a branch shall be given —

(i) To all members of the Branch Congress at least seven clear days before the meeting.

(ii) To the State Congress and the Headquarters at least fourteen days before the meeting.

According to the defendants a notice was sent out to all members on March 13, 1979 but the plaintiff denied having received any notice and said that she came to know about the meeting only on March 16, 1979 when she was informed about it by Kolanda Pyan who had read about it in the press. Anyway the defendants concede that it was not a clear seven days' notice. The requisite notice to the Johore State Congress and to the M.I.C. headquarters was not given. The defendants contend that this requirement was waived by the presence of a representative each from these two bodies at the Parit Bakar branch meeting held on March 19, 1979.

It is settled law that members of a registered society are bound by its rules. If the rules provide that disputes between any member and the society or its office-bearers are to be decided by reference to a domestic forum within the framework of the society itself then no other outside tribunal has any jurisdiction to hear such disputes in the first instance. Such a provision in the rules of a registered society has the effect of ousting the jurisdiction of the court to hear any dispute between a member and the society or its office-bearers. On this point Thomson C.J. (as he then was) had this to say in the case of *Tharmalingam* v. *Sambanthan*[1] —

"As has been said, all these questions of the relationship among members of an unincorporated association are matters of contract and the contract is to be found in the Rules or the Constitution of the association. If a member does not like the rules he has two courses open to him. Either he can refrain from joining the association, and in the present case I would observe in parenthesis that the Malayan Indian Congress has nothing in common with a trade union, membership of which may be a vital necessity if a person is to earn his livelihood. Or if he does join he can attempt to persuade his fellow members to change the rules. But so long as he remains a member and so long as the rules are there his relationship with his fellow members fall to be regulated by them."

But there is a very important distinction to be observed here. The ouster provisions of a registered society such as are found in Article 15(4) of the M.I.C. constitution render the court incompetent to entertain any complaint by a member so long as the complaint or dispute is of a domestic nature. But the court's jurisdiction is not ousted if the dispute, even if it be of a domestic nature, has not been strictly dealt with in accordance with the rules of the society or where a member alleges that any act of the society or its office-bearers is *ultra vires* the constitution. If the rules of a society have been violated then any member can quite legitimately seek redress in court for in such a situation the court is not only not incompetent to hear the complaint but is the only forum to do so in the exercise of its jurisdiction over registered societies to see that they conform to their constitution. (See the case of *Arthur M'Cowan* v. *The City of Glasgow Friendly Society & Ors.*[2]).

The plaintiff has challenged the validity of the meeting held on March 19, 1979 on the ground that in holding the meeting the requisite seven clear days' notice was not given to the members of the Parit Bakar branch. The first question to be decided is whether her allegation amounts to a domestic dispute which should be decided in accordance with the M.I.C. constitution or whether it is of such a nature as to entitle her to seek redress in court. In my view this certainly is not a dispute which can be described as domestic and therefore the plaintiff has quite rightly brought her action in court. The second question to be determined is whether non-compliance with the rules relating to the giving of the notice was a mere procedural irregularity which could be overlooked or was it fatal to the holding of the meeting rendering it null and void. Here again I have come to the conclusion that the failure to give the requisite seven clear days' notice was not a minor irregularity which could be

ignored but was a gross violation of the constitution of the M.I.C. rendering the meeting null and void.

The defendants have alleged that the plaintiff acted in bad faith in instituting the suit and also that by not getting seven clear days' notice of the meeting she was not prejudiced. To this I would say that good faith or bad faith in the institution of a suit of this kind which the plaintiff has brought is altogether immaterial — so is the fact that the plaintiff may not have been put to any disadvantage by not getting the requisite notice. The constitution of the M.I.C. has been violated and that is what matters.

I also seriously doubt the correctness of the contention that the presence of representatives from the State Congress and the M.I.C. headquarters constituted a waiver of the requisite notice of the meeting by these two bodies. I do not think there can be an effective waiver of the imperative provisions of Article 7(4)(c) of the M.I.C. constitution. These provisions are mandatory and indispensable. Even a directive from the President or from the central working committee of the M.I.C. to hold the annual general meeting of a branch without allowing for the requisite notice to be given can be of no avail.

The defendants also alleged that the plaintiff did not pay her subscription for 1979 and that she was therefore not entitled to receive the notice of the annual general meeting because by not paying her subscription she ceased to enjoy the rights and privileges of a member of the M.I.C. On this point I rather feel inclined to believe the evidence of the plaintiff that she in fact did pay her subscription for 1979 in February. The annual subscription is a mere $2. The plaintiff has been paying this sum regularly from 1974 and there is every reason to believe that she would have paid her subscription for 1979 as usual and in time especially now with her mind set on contesting the 1979 elections at the annual general meeting. Article 5(6) and (7) of the M.I.C. constitution regulate the payment of the annual subscription anl spell out the rights of the M.I.C. members as follows —

"*Membership Fee*

(6)(a) The annual subscription shall be two ringgit ($2.00) per year per member and there shall be an entrance fee of two ringgit ($2.00).

(b) Any member who fails to pay his subscription due for any year by the 31st March of that year shall cease to exercise the rights of a member.

(c) Any member who defaults in paying the subscription for the year by the end of that year shall cease to be a member.

(d) Notwithstanding anything contained in sub-article (6)(c) and sub-article (7) of this Article a member who has not paid his current subscription for any year at least 10 days before the date of the Annual General Meeting shall not take part in any election whenever held during the year.

*Rights of Members*

(7)(a) A member shall be entitled —

(i) to attend and speak at all meetings which he is entitled to attend;

(ii) to vote at all meetings which he is entitled to attend;

(iii) to hold office in the Congress to which he may be duly elected or appointed;

(iv) to have access to or to make use of such facilities as the Congress may provide;

(v) to any rights accorded to a member by the Congress.

(7)(b) A member who is suspended from membership, shall not exercise any of the rights under this sub-article."

It will be seen from the above sub-articles that failure to pay the annual subscription for any year does not deprive a member from his membership of the M.I.C. until after that year has expired. If a member fails to pay his subscription by March 31 of the year he ceases to exercise the rights of a member and if he does not pay it at least ten days before the date of the annual general meeting he is barred from taking part in any election whenever held during the year. But he ceases to be a member only if he does not pay his subscription by the end of the year. So in the present case even if the plaintiff has not paid her subscription for 1979 she does not lose everything. She ceases no doubt to exercise the rights of a member which are set out in Article 5(7) but it will be noted here that entitlement to the notice of the annual general meeting is not stated in the sub-article as one of the rights of a member. By virtue of Article 5(6)(c) the plaintiff retains her membership until the end of the year and she was therefore entitled to receive notice of the annual general meeting of the Parit Bakar branch under Article 7(4)(c).

It was also submitted that the 3rd defendant was not a proper party to the suit because he merely acted as the returning officer at the meeting. I am afraid I do not agree. As the returning officer it was the responsibility of the 3rd defendant to see that the meeting was held and conducted in accordance with the constitution of the M.I.C.

For the reasons which I have stated I am clearly of the view that Miss Agnes Joseph is entitled to the declaration she seeks and I hereby declare that the annual general meeting of the Parit Bakar branch of the M.I.C. held on March 19, 1979 was unconstitutional and therefore null and void *ab initio*. This means that all acts done by Datuk Pasamanickam and his committee in the purported exercise of their powers in the Parit Bakar branch are also null and void and of no effect.

At the commencement of the trial counsel for the plaintiff said that if a decision is made in favour of the plaintiff he would be seeking consequential orders affecting the position of Datuk Pasamanickam as the State Chairman and as a Vice-President of the M.I.C. at national level. By virtue of his election as chairman of the Parit Bakar branch Datuk Pasamanickam became one of the branch delegates to the Johore State Delegates Conference in accordance with the M.I.C. constitution and at that conference he was elected as the chairman of the State Congress. Again by virtue of his position as the chairman of the State Congress Datuk Pasamanickam was elected as a State representative to the central working committee of the M.I.C. at Kuala Lumpur and he was eventually elected as one of the three Vice-Presidents of the M.I.C.

I do not think it proper however to make any consequential orders affecting the position of Datuk Pasamanickam because the consequential orders sought for are outside the scope of this civil suit which is confined solely to the position of Datuk Pasamanickam and his committee in the Parit Bakar branch. But

I shall not refrain from saying that as a result of the decision which I have made today the position of Datuk Pasamanickam at state and national level in the M.I.C. appears to be in jeopardy.

The costs of the proceedings will be borne by the defendants jointly and severally.

*From the above judgment the 1st and 2nd defendants and the 3rd defendant appealed to the Federal Court.*

FEDERAL COURT.

*D.P. Vijandran* (*M. Muthupalaniyappan* with him) for the appellants in F.C.C.A. 245/79.

*D.P. Vijandran* (*M. Jayasingam* with him) for the appellant in F.C.C.A. 248/79.

*V.C. George* (*H. Parjit Singh* with him) for the respondent.

*Cur. Adv. Vult.*

**Raja Azlan Shah C.J. (Malaya)** (delivering the judgment of the Court): The respondent successfully sought a declaration that the annual general meeting of the Parit Bakar Branch of the Malaysian Indian Congress held on March 19, 1979 was unconstitutional and unlawful and therefore ineffective, null and void. She named the first and second appellants in Federal Court Civil Appeal No. 245/79 who were elected chairman and secretary respectively of the branch at that meeting as the first two defendants. She also named the appellant in Federal Court Civil Appeal No. 248/79 who acted as the returning officer at the said meeting as the third defendant.

The appellants appealed against the decision of the learned judge. We allowed the appeal and now give our reasons.

It is trite law that the relationship between the Malaysian Indian Congress (a registered society under the Societies Act) and its members is based on contract and the terms of the contract as embodied in the Malaysian Indian Congress Constitution will *prima facie* be binding on the parties. Article 15(4) of the said Constitution impliedly forbids members from resorting to court proceedings in matters relating to their rights, obligations, duties and privileges unless and until such matters are first referred to the Central Working Committee. The said article reads as follows:

"Every member shall be bound by the decision of the Central Working Committee in matters relating to his rights, obligations, duties and privileges as a member of the Congress. If he resorts to court proceedings in respect of his rights, obligations, duties and privileges or on behalf of any other member or in respect of the rendering or meaning of the provisions of this Constitution without first referring to the Central Working Committee or in violation of any decision or directive of the Central Working Committee, he shall *ipso facto* cease to be a member of the Congress and shall not be entitled to exercise any of the rights of a member."

The only ground of appeal taken before us is that as an agreement article 15(4) purports to oust the jurisdiction of the courts and is consequently against public policy and void. Indeed the learned judge held that such a provision in the rules of the Malaysian Indian Congress has the effect of ousting the jurisdiction of the courts to hear any dispute between a member and the Congress or its office-bearers.

One of the long standing difficulties in a subject which is often difficult, is the absence in public law of any definition of an 'ouster of jurisdiction'. That has yielded much discussion and deep analysis, with comparisons being drawn from developments in other countries. The lack of clear definition may not always matter much, and in some respects insight might be thought to resemble the old quip about the elephant: easy enough to recognise, but difficult to describe. This is well indicated by the difference of opinion in the speeches of their Lordships in the House of Lords in *Scott* v. *Avery*.[3] Crompton J. said that he considered the agreement which came under consideration in that case a mere attempt to evade the law (page 1131), while Coleridge J. (page 1134) took the view, which was upheld by the House of Lords, that the judgment of the Court of Exchequer stood on a safe distinction between an agreement which would close entirely the access to the courts of law and that which only imposed a condition precedent to the appeal to them, that the parties should have first settled by an agreed mode the precise amount to be recovered. The case of *Atlantic Shipping Company* v. *Dreyfus*[4] is another illustration of the same kind of differences of opinion, the House of Lords putting an entirely different construction upon the agreement between the parties to that which was put upon it in the Court of Appeal. In the present case article 15(4) provides as a first step that reference to the Central Working Committee is a condition precedent before resorting to court proceedings. The effect of this is that a member is not excluded from going to court but must first refer the matter to the domestic forum. It has been held in *Scott* v. *Avery, supra,* that such a clause is legitimate and not contrary to public policy. The effect of the decision is that an agreement that no right of action shall arise by action in the courts unless and until the parties' differences have been settled in some other way, for example by arbitration, is not void as being an ouster of the jurisdiction of the courts. See also 10 *Halsbury's* (4th ed.) 326-327, para. 719.

The principles on which the law proceeds are in our view well explained by the Court of Appeal in *Czarnikow* v. *Roth, Schmidt & Co.*[5] In that case a term in a contract containing an arbitration clause provided that "neither buyer, seller, trustee in bankruptcy, nor any other person as aforesaid shall require, nor shall they apply to the court to require, any arbitrators to state in the form of a special case for the opinion of the court any question of law arising in the reference, but such question of law shall be determined in the arbitration in manner herein directed." Scrutton L.J. said at page 489: "I think it is necessary to add a word about the effect of *Scott* v. *Avery, supra.* I have always understood it to be a decision that while parties cannot agree to oust the jurisdiction of the King's courts, they can agree that no action shall be brought in those courts till the amount of liability has been settled by arbitration. Alderson B. states this as agreed by all parties, and Lord Cranworth begins his judgment in the same way. I do not think the language of Lord Dunedin in commencing his judgment in *Atlantic Shipping Co.* v. *Dreyfus, supra,* can have been meant to impugn the first part of this

proposition. The courts always decline to recognize an agreement to refer all disputes to arbitration as compelling them to stay an action, and do so because such an agreement would oust the jurisdiction of the King's courts. I prefer the language of Lord Sumner, concurred in by Lords Buckmaster and Atkinson, to the effect that as long as a clause does not exclude the claimant from such recourse to the courts as is always open by virtue of the provisions of the Arbitration Act, 1889, but only requires certain conditions as precedent to a valid claim, it does not oust the jurisdiction. I think that Lord Sumner would have regarded a clause depriving the claimant of the protection of the Arbitration Act as an ousting of the jurisdiction and unenforceable. And I can conceive some conditions precedent to enforcing a claim which English courts would decline to enforce."

There are provisions in the rules of powerful organisations such as trade unions and political organisations forbidding their members, as far as they can lawfully do, from submitting their disputes to the decision of the courts unless and until certain conditions precedent are observed, for example until certain matters have been resolved by their domestic forums, upon which they themselves agree. The present case is a case in point. There have been others before the courts. What reason can there be for saying that there is anything contrary to public policy in allowing members to enter into such contracts? It seems to us that it would be a most inexpedient encroachment upon the liberty of the subject if he were not to be allowed to enter into such contracts. Is there anything contrary to public policy in saying that such organisations shall not be harrassed by court actions, the costs of which might be ruinous, and in which the delay in coming to a final decision disastrous? Does it not make for speedy and economical determination to refer such disputes to a domestic forum? We can see not the slightest inconvenience or denial of justice that can flow from such agreements. On the other hand, we see great advantages that may arise from them. So long as the courts retain sufficient hold over them to prevent and redress any injustice on the part of such organisations, and to secure that their decisions are in substance made in accordance with the requirements of natural justice and not with some home-made and arbitrary rules of the organisations the courts will not interfere with their decisions. By allowing the disputes to be first decided according to the rules of the organisations courts do not release real and effective control over them or allow them to be a law unto themselves or to give them a free hand to decide disputes according to their whims and fancies. No association is outside or above the law. But so long as at the appropriate moment recourse to the courts is available to the members, the courts can and will safely allow the members to organise their own affairs according to the terms and tenor of their agreements, but that appropriate moment will not have arrived until and unless the members have fully utilised their rights and privileges under such agreements. We are satisfied that article 15(4) contains no indication of an intention to fetter the power of the courts to enforce the contractual position of the parties. In our view it is not essentially different in character from ordinary statutory provisions limiting the time during which various procedural steps can be taken to enforce an action. Such provisions are generally speaking not designed to oust the jurisdiction of the courts but may, at the option of the party sued, be set up to bar a remedy and correct a grievance until the grievance has been investigated in the proper forum.

We would be slow to interfere with the decision of the members of the Malaysian Indian Congress professing to act under their rules, unless it could be shown either that the rules were contrary to natural justice, or that what had been done was contrary to the rules of the association, or that there had been *mala fides* or malice in coming to a decision. It gives us great satisfaction to know that these points were not in issue before us.

*Appeal allowed.*

Solicitors: *Nahappan, Muthu & Peri; M. Jayasingam & Co.; H. Parjit Singh & Co.*

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## V. LETCHUMANAN v. CENTRAL MALAYSIAN FINANCE BHD.

**[F.C. (Raja Azlan Shah C.J. (Malaya), Chang Min Tat F.J. & Syed Othman F.JJ.) March 7 & 31, 1980]**

**[Kuala Lumpur — Federal Court Civil Appeal No. 140 of 1976]**

*Land Law — Charge — Acknowledgement in charge of receipt of $900,000 — Money in fact drawn from time to time — Annexure to charge — Use of Form 16A — Complaint of breach — Whether specific enough — Total amount not specified when order for sale made — Point not raised at trial — National Land Code, ss. 242, 254 and 257.*

In this case the appellant had charged his land to the respondent to secure the repayment of the loan of $900,000. On failure to repay the sum the respondent obtained an order of sale of the land. The appellant appealed. At the trial the appellant had argued (1) that the charge was inaccurate in acknowledging the prior receipt of the sum of $900,000 when in fact the loan was taken by instalments; (2) that the use of Form 16A was wrong and (3) that the breach complained of was not specified in the notice. On the appeal, the appellant also raised the failure of the respondent to specify the total amount due to the chargee at the date when the order for sale was made.

**Held:** (1) read as a whole the contents of the charge consisting of the statutory form and the annexure did set out the actual agreement between the parties. While there was no obligation at the date of the execution of the charge to pay the $900,000 expressed in the charge, there was also no obligation on the proper construction of the charge to pay any part of the loan actually advanced until demand had been made or, as in this case, without demand, until a full year had clapsed after the release of the complete amount of the loan, when only the first instalment would be payable;

(2) the use of Form 16A in this case was correct;

(3) the notice given in this case was specific enough to enable the appellant to know what was the breach complained of and what he had to do to abort the application for sale;

(4) although the respondent had not specified the total amount due to the chargee on the date when the order of sale was made, as this point was not taken in the court below, the Federal Court was not predisposed at the appellate stage of the proceedings to consider it.

FEDERAL COURT.

*S.K. Lingam* for the appellant.